



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Request for Proposals—March 24, 2015 Regulation of Higher Education

The Administrative Conference is seeking a consultant to undertake a research project that will study negotiated rulemaking, interagency coordination, and retrospective review at federal agencies responsible for administering grants and other federal programs at institutions of higher education.

Proposals are due by 6:00 p.m. Eastern Time on June 1, 2015 (due date extended from April 27, 2015)

Background.

The Conference previously issued Recommendation 82-4 and Recommendation 85-5, *Procedures for Negotiating Proposed Regulations*.¹ These two recommendations set forth the criteria for choosing proceedings suitable for negotiation and proposed procedures that agencies should follow when conducting negotiated rulemaking. The Conference's work in this area led to enactment of the Negotiated Rulemaking Act in 1990² and to use of the procedures by many agencies.

More recently, the Conference has issued two cross-cutting recommendations aimed at improving interagency coordination and retrospective review at federal agencies. Recommendation 2012-5, *Improving Coordination of Related Agency Responsibilities*,³ offers suggestions for improving coordination among multiple agencies that operate in shared regulatory space. Recommendation 2014-5, *Retrospective Review of Agency Rules*,⁴ examines agency procedures for reviewing existing regulations and seeks to promote a culture of retrospective review at agencies.

The need for improvement in all three of these areas—negotiated rulemaking, interagency coordination, and retrospective review—by the agencies that administer grants and other federal programs at American universities has become the subject of much recent attention from the Association of American Universities, the Council on Governmental Relations, and other prominent professional organizations. It is one component of a broader discussion about whether higher education regulations have become duplicative, redundant, and unduly burdensome.⁵ Undoubtedly, the regulation of university research is important and necessary to ensure federal

¹ See 47 Fed. Reg. 30,708 (July 15, 1982); 50 Fed. Reg. 52,895 (December 27, 1985).

² 5 U.S.C. §§ 561-570 (1994 & Supp. IV 1998).

³ See 77 Fed. Reg. 47,810 (Aug. 10, 2012).

⁴ See 79 Fed. Reg. 75,114 (Dec. 17, 2014).

⁵ See Tobin L. Smith et al., *Reforming Regulation of Research Universities*, ISSUES IN SCIENCE AND TECHNOLOGY, Summer 2011, at 59-64, available at <http://www.aau.edu/WorkArea/DownloadAsset.aspx?id=12330>.



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funds are used appropriately. Overregulation, however, may be contributing to the increasing cost of postsecondary education. Given its past recommendations on negotiated rulemaking, interagency coordination, and retrospective review, the Conference is now seeking to conduct a study specifically examining these issues in the context of higher education regulation and providing recommendations.

Project Description.

The Conference seeks proposals for a comprehensive study of negotiated rulemaking, interagency coordination, and retrospective review at federal agencies responsible for administering grants and other federal programs at institutions of higher education. The goal of the study is to: (1) examine the roles of negotiated rulemaking, interagency coordination and retrospective review in the current regulatory process; and (2) make recommendations for improving the use of these procedures in higher education regulation.

The consultant for this study would be encouraged to, as appropriate, draw on the results of other studies or reports on higher education regulation.⁶ The consultant would also be encouraged to work with Conference staff to include relevant agencies, such as the Department of Education and National Institutes of Health, and other interested stakeholder groups in the research process. A detailed scope of work follows, but the Conference encourages prospective consultants to comment on the scope of work in their project proposals, and identify/include any additional research subjects related to this topic that the Conference may wish to consider.

Scope of Work

The study should include the following:

- An examination of existing literature on regulations and compliance requirements in higher education research, and the associated costs and benefits of these regulations and requirements.
- An examination of the current use of negotiated rulemaking, interagency coordination, and retrospective review by agencies responsible for administering grants and other federal programs at institutions of higher education and possibilities for improving this use.

⁶ See e.g., U.S. Senate, Committee on Health, Education, Labor and Pensions, *Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education*, Feb. 12, 2015, at 90-125, available at http://www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf (containing appendix entitled “Enhancing the Use of Negotiated Rulemaking by the U.S. Department of Education,” a white paper by Professor Jeffrey Lubbers of American University School of Law).



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- An examination of perspectives from the White House, federal agencies, Congress, regulated parties, stakeholders, and advocacy groups regarding these procedures and possibilities for improvement.

How to Submit a Proposal.

Proposals are invited from qualified persons who would like to serve as a research consultant on this project. All responses will be considered by the Conference staff and the Chairman.

A consultant's study should result in a report that is delivered first for review by the Conference staff and Chairman and then forwarded to a committee of the Conference membership for consideration. The report should provide proposed recommendations. The consultant works with Conference staff and the committee to refine and further shape the report and may work with Conference staff to revise the recommendations. Recommendations approved by the committee are then forwarded to the Council of the Conference for consideration, and the Council forwards the recommendations (with its views) to the full Conference membership meeting in plenary session. If approved at the plenary session, a recommendation becomes an official recommendation of the Administrative Conference. (For a general understanding of how the Conference is organized and operates, see 5 U.S.C. §§ 591-596, and <http://www.acus.gov>.)

The Conference will provide a consulting fee for this study plus a budget for related expenses. The Conference also typically encourages its consultants to publish the results of their studies in journals or other publications. Thus, working as a Conference consultant provides some compensation, a publication opportunity, and the opportunity to work with Conference members from federal agencies, academia, the private sector, and public interest organizations to help shape and improve administrative law, procedure, and practice. Those submitting proposals should understand that, in addition to the work involved in researching and writing the consultant's report, the consultant will (in most cases) need to work with Conference staff and committees as the Conference develops a recommendation based on the report. The consulting fee is not designed to match a consultant's normal consulting rates. It is a significant public service to serve as a consultant to the Conference.

To submit a proposal to serve as the Conference's consultant on this project, you must:

- Send an e-mail to Attorney Advisor Funmi E. Olorunnipa, at folorunnipa@acus.gov. Proposals must be submitted by e-mail.
- Include the phrase "ACUS Project Proposal" in the subject line of your e-mail.

In the body of your e-mail or in an attachment, please:

- State the name of the project for which you are submitting a proposal: "Regulation of Higher Education."
- Explain why you would be well qualified to work on the project. Include your *curriculum vitae* or other summary of relevant experience.



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- Explain your research methodology and how you would develop recommendations based on the research. There is no required format, and 2-4 pages should probably be sufficient.
- State how much funding you would need for the project, keeping in mind that a typical Conference research contract includes a consulting fee of \$12,000 - \$15,000 plus travel expenses of \$1,000, and research assistance expenses of \$1,000. There may be some flexibility in the budget based on factors relating to the proposal (e.g., the consultant's location relative to Washington, DC, and the need for research assistance and empirical or interviewing work), so your proposal should suggest any special needs in this regard. The amount of the consulting fee and expenses will not be a critical factor in the award of the contract; the quality of the proposal and of the consultant's ability to carry out the study will be the most important factors.
- Propose a schedule for the project deliverables. This project requires submission of a draft outline, a final outline, a draft report, and a final report. Multiple draft reports may be necessary based on input from the Chairman, staff, or committee; nonetheless, the draft report should be substantially complete. The timeline for deliverables should substantially adhere to the schedule below, but high quality research leading to a well-written report will be the prime consideration.

Deliverable	Due Date
Draft Project Outline	Contract award date + 30 Days
Final Project Outline	Draft Project Outline + 15 Days
Draft Report	Final Project Outline + 180 Days
Final Report	Draft Final Report + 45 days

A November 2015 submission date for the draft report is preferred, so that a committee recommendation, if any, can be targeted for completion at a plenary session of the Conference held in June 2016.

Submit your proposal by 6:00 p.m. Eastern Time on April 27, 2015. Only proposals submitted by the stated deadline are guaranteed to receive consideration. Proposals may also be submitted or amended at any time until the award of the contract, and the Conference may consider any proposals or amended proposals received at any time before the award of the contract.

Proposals will be evaluated based on:



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- The qualifications and experience of the researcher(s) and knowledge of literature in the field (if applicable);
- The quality and clarity of the proposal;
- The timeline of the proposal and the ability of the researcher(s) to perform the research in a timely manner;
- The likelihood that the research will contribute to greater understanding of the subject matter studied and lead to an Administrative Conference recommendation that will improve administrative procedures in the federal government; and
- The cost of the proposal (although the other factors are more important).

Failure to follow the above instructions may result in your proposal not being considered. Including the phrase “ACUS Project Proposal” in the subject line of your e-mail is important so that your proposal can be easily identified.